

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
CHARLOTTESVILLE DIVISION

LAURIE A. CLARK

Plaintiff,

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant.

CIVIL ACTION NO. 3:10-CV-41

ORDER

JUDGE NORMAN K. MOON

On April 15, 2011, Defendant filed a motion to dismiss with prejudice in the above captioned case. (docket no. 28). After a hearing before United States Magistrate Judge B. Waugh Crigler, the Magistrate Judge recommended that the motion be denied insofar as it seeks dismissal with prejudice, and granted with certain conditions. (docket no. 32). As Plaintiff has not timely filed any objections to the report and recommendation, it is hereby ADOPTED in its entirety. Accordingly,

- 1) Defendant's motion to dismiss (docket no. 28) is hereby GRANTED in part and DENIED in part;
- 2) The motion is DENIED to the extent Defendant seeks dismissal with prejudice;
- 3) Plaintiff's action is DISMISSED upon the following terms and conditions:
 - a. The Plaintiff may refile her action against Defendant only in the Western District of Virginia;
 - b. Any case must be filed within the period of limitations and any tolling allowed by Virginia law;

- c. Defendant forthwith is to notify Plaintiff's counsel of record of the amount of expense, if any, incurred in scheduling the cancelled medical examination which sum must be tendered to Defendant's counsel prior to initiating any further proceedings.

It is so ORDERED.

The Clerk of the Court is directed to send a certified copy of this order to all counsel of record.

Entered this 19th day of May, 2011.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE